

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

IN RE: Sun Communities Operating LTP )  
Dist. 6, Map 40, Control Map 40, Parcels 4.02 & 4.02T ) Montgomery County  
Residential and Commercial Property )  
Tax Year 2006 )

## INITIAL DECISION AND ORDER

## Statement of the Case

The subject property is presently valued as follows:

## Parcel 4.02

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,357,500	\$1,829,800	\$3,187,300	\$1,274,920

## Parcel 4.02T

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$ -0-	\$4,701,400	\$4,701,400	\$1,175,350

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on March 14, 2007 in Clarksville, Tennessee. The taxpayer was represented by registered agent Christopher D. Richter. The assessor of property was represented by staff appraiser Robert Hunt. Also in attendance at the hearing were Mike Beauchamp, a real estate analyst with Rash & Assoc., Tom McVey, the manager of subject property and Montgomery County staff appraiser Roy Manners.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property is commonly known as the Bell Crossing Mobile Home Park located at 750 Dunlop Lane in Clarksville, Tennessee. Parcel 4.02 consists of a 53.4 acre tract improved with an office, clubhouse, pool, 239 mobile home sites and other minor improvements. Parcel 4.02T reflects the aggregate value of the 127 mobile homes assessed on the relevant assessment date of January 1, 2006.<sup>1</sup>

Subject property consists of two phases containing a total of 239 lots. According to Mr. McVey, 111 of the 130 lots in Phase I are presently occupied and 5 or 6 of the 109 lots in Phase II are presently occupied.<sup>2</sup>

<sup>1</sup> The testimony concerning the number of mobile homes and the occupancy level was sometimes inconsistent because references were made to both the current situation and the situation as of January 1, 2006. The discrepancies are not significant for purposes of a pro forma income approach.

<sup>2</sup> See footnote 1. In addition, it should be noted Mr. McVey indicated that the taxpayer has attempted to fill Phase 1 before leasing lots in Phase 2.



I. Parcel 4.02

The taxpayer contended that this parcel should be valued at \$1,440,442. In support of this position, the following income approach was introduced into evidence.

Effective Gross Income	\$ 388,738
Less Operating Expenses (including taxes)	- <u>215,885</u>
Net Operating Income (NOI)	\$ 172,853
NOI Capitalized at 12%	÷ <u>.12</u>
Indicated Value	\$1,440,442

Following the testimony, Mr. Richter proposed an alternative valuation of \$2,100,000. According to Mr. Richter, the maximum actual net operating income of \$207,158 should be capitalized using a loaded 12% capitalization rate resulting in a "base value" of \$1,726,317. Mr. Richter then added to the figure an additional \$360,000 by valuing the 24 acres in Phase II at \$15,000 per acre or \$360,000.

The assessor contended that parcel 4.02 should remain valued at \$3,187,300. In support of this position, the following income approach was introduced into evidence:

Effective Gross Income	\$ 440,421
Less Operating Expenses (including taxes)	- <u>185,573</u>
Net Operating Income (NOI)	\$ 254,849
NOI Capitalized at 10.86%	÷ <u>.1086</u>
Indicated Value	\$2,345,776

Value of Phase II

24 acres @ \$15,000/AC	\$ 350,000
109 lots @ \$6,400/lot	+ <u>558,080</u>
	\$ 908,020

Total Property Value	\$3,253,856
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The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.



The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

Since the taxpayer is appealing from the determination of the Montgomery County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds that Mr. Hunt's income approach should receive greatest weight insofar as Phase I is concerned. The administrative judge finds that in *First American National Bank Building Partnership* (Davidson Co., Tax Years 1984-1987) the Assessment Appeals Commission ruled that it "is the entire fee simple unencumbered value and not any lesser or partial interests" which is normally subject to taxation. Thus, an appraisal of the leased fee estate is irrelevant.

The administrative judge finds that Mr. Hunt attempted to appraise the fee simple estate. Although Mr. Hunt's income approach begins with an estimate of stabilized effective gross income, he first calculated potential gross income and then projected future income and expenses. As stated in one authoritative text:

To apply any capitalization procedure, a reliable estimate of income expectancy must be developed. Although some capitalization procedures are based on the actual level of income at the time of the appraisal, all must eventually consider a projection of future income. An appraiser must consider the future outlook both in the estimate of income and expenses and in the selection of the appropriate capitalization methodology to use. Failure to consider future income would contradict the principle of anticipation, which holds that value is the present worth of future benefits.

Historical income and current income are significant, but the ultimate concern is the future. The earning history of a property is important only insofar as it is accepted by buyers as an indication of the future. Current income is a good starting point, but the direction and expected pattern of income change are critical to the capitalization process.

Appraisal Institute, *The Appraisal of Real Estate* at 497 (12<sup>th</sup> ed. 2001).

Respectfully, the administrative judge finds that Mr. Richter appraised the leased fee estate. The administrative judge finds that Mr. Richter simply utilized the 2005 actual effective gross income in his income approach. The administrative judge finds that the



proof does not support such an assumption for a stabilized income estimate for two reasons. First, subject property's actual effective gross income increased 13% between 2003 and 2004 and 21% between 2004 and 2005. Second, Mr. McVey's testimony clearly supports the assumption on January 1, 2006 that subject property would enjoy both increased occupancy and income in the future. Ironically, the administrative judge discovered after the hearing that Mr. Richter's primary exhibit (#1) included a discounted cash flow analysis that was not addressed at the hearing. Not surprisingly, that analysis assumes a 2% annual growth in potential gross income and significantly lower vacancy rates.

The administrative judge finds that in Tennessee property taxes are accounted for by loading the capitalization rate rather than as an expense item. See e.g. *Frederick G. Kelsey* (Assessment Appeals Commission) (Montgomery Co., Tax Year 1991) at 3. The administrative judge finds Mr. Hunt accounted for taxes by utilizing an effective tax rate of 1.78% in addition to his base capitalization rate of 9.08%. The administrative judge finds that Mr. Richter's expense estimate included property taxes. The administrative judge finds that if property taxes are excluded from Mr. Richter's estimate of operating expenses, Mr. Hunt has actually assumed significantly higher expenses in his pro forma \$185,573 vs. \$162,413).

The administrative judge finds that Mr. Hunt developed his 9.08% base capitalization rate by the mortgage equity rate development approach summarized on page 3 of exhibit 2. Respectfully, Mr. Richter offered no proof to substantiate the 12% (with no tax load) rate assumed in his income approach.

Based upon the foregoing, the administrative judge finds that Mr. Hunt's income approach should receive greatest weight insofar as Phase I is concerned. As previously noted, this portion of Mr. Hunt's analysis reflects a value of \$2,345,776.

With respect to Phase II, however, the administrative judge finds one adjustment in order. The administrative judge finds Mr. Hunt was unable to articulate the basis for valuing the 109 lots at \$6,400 per lot given the fact that the acreage, pads and utilities have been separately accounted for. The administrative judge finds exhibit 3 clearly indicates that the values assigned to the pads include utilities. Thus, it appears that the \$6,400 per lot value is duplicative and should be set aside. This results in a value of \$350,000 for the excess acreage in Phase II and a total appraised value of \$2,695,776 before rounding.

The administrative judge finds the reduction in the improvement value should reflect the parties agreed that the value of the pads should be reduced from \$1,643,265 to \$1,318,520. This reflects that 99 pads are properly classified as "poor" and 140 pads are properly classified as "excellent." Given the stipulated 15% depreciation rate, an excellent



pad value of \$91,000, and a poor pad value of \$2,800, a total pad value of \$1,318,520 results.

The administrative judge finds that by valuing the 24 acres in Phase II at \$350,000, the total land appraisal is effectively reduced to \$1,088,400 (\$350,000 + 130 lots in Phase I @ \$5,680 per lot). The remaining \$1,607,400 in value is therefore allocated to the improvements with the pads accounting for \$1,318,520 of that total.

The administrative judge finds it unnecessary to further address the current appraisal of subject land despite the time devoted to that issue for two reasons. First, except for the single sale referred to by Mr. Hunt no comparable sales were introduced into evidence.<sup>3</sup> Second, since the administrative judge is relying on the income approach, a reduction in the land value would simply result in a higher improvement value to reflect the total value indicated by the income approach.

## II. Parcel 4.02T

The taxpayer contended that the 68 mobile homes it owns should be reduced in value across-the-board by 35.4%. In support of this position, the taxpayer introduced 10 recent sales of mobile homes located in subject development that it had sold to various individuals (exhibit #5). The taxpayer noted that on average the mobile homes were sold for 35.4% less than the assessor's appraisal of the particular mobile home. Accordingly, the taxpayer asserted that the current appraisals of each mobile home should be reduced by 35.4%.

The assessor contended that the various sales relied on by the taxpayer are not indicative of market value. In support of this position, Mr. Manners introduced a spreadsheet (exhibit #6) summarizing 21 multiple sales of mobile homes located in subject development, 16 of which involved the taxpayer. Mr. Manners maintained that the sales relied on by the taxpayer are not indicative of market value because the taxpayer typically acquired the mobile homes following foreclosure, bankruptcy, etc.

The administrative judge finds that mobile homes are assessed as individual improvements to the land pursuant to Tenn. Code Ann. § 67-5-802(a)(1). As previously noted, Tenn. Code Ann. § 67-5-601(a) provides that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . . ." Given the foregoing statutes, the administrative judge finds that the fair market value of each individual mobile home constitutes the relevant issue.

Respectfully, the administrative judge finds that the taxpayer's methodology must initially be rejected because it does not address the market value of the individual mobile

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<sup>3</sup> The administrative judge finds the sale was not adjusted or meaningfully analyzed. Ironically, the taxpayer sought to utilize the sale it was previously unaware of because it reflected a consideration of \$15,000 per acre whereas subject land is effectively appraised at \$25,421 per acre.



homes or the amount by which a particular mobile home has purportedly been overvalued. According to the taxpayer's calculations, the ratios of the appraised value versus sale price for each sale was as follows:

1.34  
1.90  
1.54  
1.07  
1.60  
1.37  
1.07  
.97  
1.10  
1.58

The administrative judge finds that the use of a 35.4% mean is in no way representative of a particular mobile home.

The administrative judge finds that the taxpayer's methodology must also be rejected because it reflects "investment value" rather than "market value." The administrative judge finds that market value and investment value are two distinct concepts. The administrative judge finds that investment value is typically defined as follows:

The specific value of an investment to a particular investor or class of investors based on individual investment requirements; distinguished from market value, which is impersonal and detached.

Appraisal Institute, *The Dictionary of Real Estate Appraisal* (4<sup>th</sup> ed. 2002).

The administrative judge finds Mr. McVey testified that the mobile homes are typically purchased from "repo companies" or tenants "needing relief who were leaving." According to Mr. McVey, the taxpayer sets the price for a particular mobile home by adding to the acquisition cost the cost of any renovations plus a mark-up of \$7,000 or \$9,000.<sup>4</sup> The asking price is reduced if the mobile home has been on the market for 130 days.

The administrative judge finds that Mr. Manners' analysis also supports the conclusion that the prices realized by the taxpayer are indicative of investment value rather than market value. For example, the mobile home on lot #6 was purchased by Andrea Slayden on February 28, 2002 for \$41,957 pursuant to an assumption agreement. Oakwood Acceptance Co. subsequently repossessed the mobile home and sold it to the taxpayer on June 23, 2003 for \$9,588. On December 27, 2006, the taxpayer sold the home to Lory Hendricks for \$12,900.

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<sup>4</sup> Mr. McVey stated that the mark-up was increased from \$7,000 to \$9,000.



The administrative judge finds as noted by Mr. Manners that the taxpayer's sales prices do not include set-up, delivery, etc. because the mobile homes are all already on the property. Indeed, Mr. McVey testified that the mobile homes cannot be moved for one year.

Based upon the foregoing, the administrative judge finds that the taxpayer introduced insufficient evidence to establish the market value of any of the mobile homes at issue. Accordingly, the administrative judge finds that the current appraisals must be presumed correct based upon the presumption of correctness attaching to the decision of the Montgomery County Board of Equalization.

#### ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

##### Parcel 4.02

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,088,400	\$1,607,400	\$2,695,800	\$1,078,320

##### Parcel 4.02T

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$ -0-	\$4,701,400	\$4,701,400	\$1,175,350

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

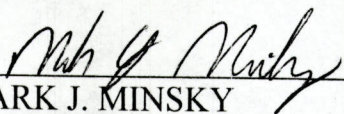
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or



3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3rd day of April, 2007.

  
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MARK J. MINSKY  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Chris D. Richter  
Ronnie D. Boyd, Assessor of Property